

CHAPTER 11

THE ROLE OF UK STATUTORY NATURE CONSERVATION AGENCIES IN THE ENVIRONMENTAL GOVERNANCE OF FISHERIES

N CLARE ENO AND MARK GRAY

Senior Fisheries Policy Officer and Sea Fisheries Liaison Officer, Countryside Council for Wales, Bangor, Gwynedd, LL57 2LQ

Abstract

The subject of this chapter is the increasing role of statutory nature conservation agencies (NCAs) in fisheries governance in the UK. There are three main sections: in the first section, we set out the powers and responsibilities of UK NCAs in relation to the designation of marine sites and the potential for them to be protected from fishing activity. In the second section, we explain the wider strategic role of NCAs in helping to shape future fisheries policy at European, UK, national and local levels. In the third section, we discuss how effective NCAs are in fulfilling each of these roles, and what the main obstacles are to improving their effectiveness.

11.1 Introduction

There is no doubt that the statutory nature conservation agencies (NCAs) are playing an increasingly important role in UK fisheries governance, and, in this chapter, we explain and evaluate this role. The Country Agencies – Countryside Council for Wales (CCW), Scottish Natural Heritage (SNH) and English Nature (EN) – are the statutory wildlife advisers to national governments: they deliver their statutory responsibilities for Great Britain as a whole, and internationally, through the Joint Nature Conservation Committee (JNCC) and are collectively known as the nature conservation agencies (NCAs). CCW and EN are empowered by three main pieces of legislation: the National Parks and Access to the Countryside Act 1949; the Wildlife and Countryside Act 1981 (amended by the Countryside and Rights of Way (CroW) Act 2000); and The Conservation (Natural Habitats, &c.) Regulations 1994. SNH is empowered by the Natural Heritage (Scotland) Act 1991 and The Nature Conservation (Scotland) Act 2004.

We divide the influence on fisheries governance of the work of NCAs into two categories: **statutory** and **strategic**. The statutory work consists mainly in advice on selecting, designating and managing marine sites, and on the effect which activities could have upon the environment. This work can impact directly on fishing activities. NCAs do not have powers to manage fisheries, but their designating authority does give them substantial leverage over the way that other bodies manage fisheries. In section two, we explain this statutory work, giving illustrations, and pointing out certain difficulties faced by NCAs in carrying out these duties.

NCAs also give advice to governments (at international, national, and sub-national levels); to the fisheries regulators; and to others on wildlife conservation including on the potential environmental impacts of fishing activities. This is discussed in section

three, where we explain the strategic work of NCAs, which is essentially their advocacy role by which they seek to influence fisheries and environmental policy makers, including politicians.

In section four, we evaluate how effective NCAs are in carrying out these two roles, and we examine four ways in which their performance could be improved by removing legal and political obstacles, and by plugging information deficits. We conclude by summarising the findings of the chapter, and discussing five further issues that NCAs might address in their role as marine environmental stewards.

11.2 Statutory role: Influence over fisheries governance in marine sites

The statutory work of NCAs that affects fisheries lies essentially in their powers in relation to the designation of national – SSSIs (Sites of Special Scientific Interest) and MNRs (Marine Nature Reserves) – and European marine sites – SACs (Special Areas of Conservation) and SPAs (Special Protected Areas). Let us consider these sites in turn.

11.2.1 SITES OF SPECIAL SCIENTIFIC INTEREST (SSSIs)

The NCAs can designate SSSIs on land and along the intertidal zone for “special interest by reason of its flora, fauna or geological or physiographical features” (JNCC 1996). Each individual site notification contains a list of activities “likely to damage the special interest” (potentially damaging operations), and these include fishing activity, fisheries management, marine life collection or alterations to fishery management practice. SSSIs may encompass inter-tidal fisheries such as shellfish cultivation, mechanical and hand gathering of shellfish (for example, cockles and mussels) and netting for finfish. The amendment of the Wildlife and Countryside Act 1981 by the Countryside Rights of Way Act 2000 (CRoW Act) (or The Nature Conservation (Scotland) Act 2004) provides an assessment process that fisheries management authorities have to undertake before permitting an operation that is likely to damage a feature of the SSSI.

However, whilst the CroW Act requires a fisheries authority to seek assent from a NCA before permitting a potentially damaging operation in a SSSI, a NCA cannot stop a fishing activity within an SSSI unless it can serve notice on an owner/occupier. The protection of SSSIs is limited, therefore, because management agreements/notices do not apply to third parties and there is no provision to hold a fisheries authority accountable for allowing third parties to act. An offence could only be committed by a third party (such as a fisherman) if damage to a SSSI feature was intentional and the feature was known to be within the SSSI. The difficulty of prosecuting third party activity is further compounded by the public right to fish, because a fisherman could argue he was exercising his right to fish.¹

11.2.2 MARINE NATURE RESERVES (MNRs)

Seven MNRs were originally proposed by the NCAs in Great Britain (in the 1980s

¹ In common law, the public has a right to fish in the sea within the territorial waters of the UK unless an individual has acquired exclusive rights or Parliament has restricted the common law rights of the public. The public right extends to taking fish from the foreshore – the land between high and low water (CCW 2002).